

**N.D.A.G. Letter to Orvik (Sep. 11, 1986)**

September 11, 1986

Mr. Charles D. Orvik  
Pierce County State's Attorney  
P.O. Box 196  
Rugby, ND 58368

Dear Mr. Orville:

Thank you for your letter of August 14, 1986, concerning township authority to close a section line road which is open and has been improved. I am responding to you via this letter instead of an opinion, because it appears that prior opinions of this office have dealt with the subject of your question.

Section lines outside the limits of incorporated cities, unless closed by statutory proceedings, are open and available for public travel without the necessity of any prior action by a board of township supervisors or county commissioners. This was the holding of the North Dakota Supreme Court in the case of Small v. Burleigh County, 225 N.W.2d 295 (N.D. 1974), and was cited by this office in an opinion to the Stark County State's Attorney (cited 1981 N.D. Op. Att'y. Gen. 207). In that opinion, it was noted that because section line rights-of-way are open for public travel without the necessity of any action by county commissioners or township supervisors, petitions under N.D.C.C. §§24-07-05 through 24-07-09 were not applicable for opening section lines.

If it is desired for a section line right-of-way to be closed to public travel, then the proceedings under N.D.C.C. §24-07-03 would be necessary. Those proceedings provide for action by the county commissioners on the petition of a person having an interest in the adjoining land or portion thereof, for the closing of the section line under certain specified conditions.

It has been previously determined by this office in 1983 N.D. Op. Att'y Gen. 91, that boards of township supervisors have the authority to establish a township road system under N.D.C.C. §§24-01-01 and 24-06-01. That opinion also noted that a board of township supervisors need not actually lay out and construct a road on a section line right-of-way merely at the request of an individual. That opinion gives the board of township supervisors discretion in establishing its township road system. It has also been previously noted by this office, in 1985 N.D. Op. Att'y. Gen. 162, that board of township supervisors have the duty to remove trees from rights-of-way of township roads for purposes of maintaining traffic safety.

Therefore, it becomes the duty of township supervisors to open and lay out the township road system that they believe necessary for travel within their township, and they must expend public funds for the maintenance of that system as noted under N.D.C.C.

§24-06-19. If the board of township supervisors has the authority to add to the township road system, then it surely has the commensurate authority to delete therefrom. However, deletion from the system of township roads does not prohibit public travel on section line rights-of-way absent closure procedures under N.D.C.C. §24-07-03.

If a township determines to delete from its township road system a certain portion thereof which is also located on section line right-of-way, the township may be faced with liability issues not specifically dealt with in the recent case of DeLair v. County of LaMoure, 326 N.W.2d 55 (N.D. 1982). That case dealt with the motor vehicle accident liability of various parties. The court determined that a township was not liable for damages occurring on a section line right-of-way where there had never been an improved road opened by official action, and noted that there was no duty on the part of a county or township to open and maintain an improved road on a section line merely because the section line was declared open for public travel by statute.

Sincerely,

Nicholas J. Spaeth

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